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My name is Thomas V. Silvia (p-46610). I participated in the drafting of amendments to MRPC 6.3 to permit fee sharing with non-lawyer qualified legal referral services beginning in 1995. I note with approval that this Rule appears unchanged in any fashion in the proposed Amendments to the Michigan Rules of Professional Conduct other than the substitution of the word paragraph (b) (c) for subrule (b) (c) language as we drafted it and submitted it to the representative assembly from the Standing Committee on Legal Services.

Changing this single paragraph involved two years of consultation with the ABA and study of the impact in other jurisdictions as well as an additional two years developing standards for implementing language regarding reasonableness of membership fees and access to all qualified bar members, specialty practice concerns and impacted prepaid legal services. Frankly, I felt the business was unfinished when the Committee was dissolved in the revamping of the State Bar organization in 2000-01 when I became Chair of the American Indian Law Section and resisted dissolution of the related Standing Committee on Indian Law which had promulgated two amended Court Rules and a Model Code for Enforcement of Personal Protection Orders across the multiple jurisdictions involving tribal courts remedies in Michigan.

Sweeping changes are proposed under the MRPC apparently replacing 39 pages of well established and well understood guidelines for professional conduct of lawyers in Michigan with new standards recommended by ABA committees advocating for multidisciplinary practice, a smokescreen to make profits centers out of law firms for the folks who brought us Arthur Anderson, Enron and World Com. See e.g. Rule 1.2 changes to Scope of representation designed to take the lawyer out of the decision making driver seat for directing litigation, sticking him with a heightened legal duty for fraud by the entity and the lawyer herself (expanded in a half dozen references - there used to be a protective reference distinguishing fraud from negligent misrepresentation that's now gone and needs to be preserved), diminishing the duty to disclose for government agents faced with a whistle blower situation, and generally implying a duty to follow the leader. In fact there are inordinate amounts of detail involved in modifying who takes charge and how they do it which substantially change the boundaries of the lawyer client relationship in a manner that will cost small practitioners dearly in time, deatil , expense and afford greater protectuion to large firms and other entities. Even the inadvertent faxing of a damaging document receives greater protection under proposed MRPC4.4. Who is more likely to do that- someone pushing huge volumes of paper with a faceless staff- or a sole practitioner who finds the smoking gun by accident ?

And it doesn't end when the harried sole practitioner keels over from a heart attack because he can't afford healthcare on his fees for court appointments- now he has an obligation to create a plan with another lawyer - ostensibly so they can take way the license and carry on a grievance after the lawyer dies- or is it canse he revives ?

Whose little darlings drafted these modifications ? Certainly NOT persons concerned with protecting individual liberties- The first omission I noted diminishes the duty of government officials to represent the public interest and deletes protections for an attorney's beliefs, however at odds they may be with precedent, tradition, progress or the status quo. (Comments to Scope and Applicability para. 21)

Next it appears that every

penny pinching flat fee client who doesn't reveal the scope of his problem is entitled to representation through the appellate process whether they pay for it or not. MRPC 1.2 clearly the people who wrote this are not representing angry divorce clients who don't get custody or parenting time, drinks and addicts or others who delude themselves by rewriting their history as a coping mechanism- The remedy - ANOTHER WRITTEN DOCUMENT- anticipating and informing the client of all the problems a lawyer anticipates because of the misconduct of prior clients. building trust is the essence of the one on one client relationship- markedly distinct from the corporate business entity- Even in the Modern World- sole practitioners are more like old time country singers operating on a handshake and a pay as you go relationship- Most of my clients spend their entire lives avoiding these details.

The new MRPC 1.18 proscriptions on prospective clients need serious study- trial in selected venues, evaluation, suggestions for implementation and time to accomodate it- HAS any attention been given to the potential this rule has to scare off clients and lose business ?

Who wins ? Insurance companies were specifically refernced as an example of potential conflict under old MRPC 1.7 (deleted as proposed) detailing the notion that an insurance company paying for litigation defense might direct a lawyer to settle and save money instead of vindicating the client. MRPC 3.1 eliminates the best language I ever had to use to demonstrate a frivolous case- malicious pleadings designed to harass and intimidate- substituting what a judge's decision that he doesn't like the lawyer or his position ?

The first 50 pages of definitions regarding what a lawyer is and does are covered in the existing rules by 11 pages that have worked just fine-

Do you realize what the proposed MRPC 5.4 (a) 4 addition permitting fee sharing with not for profit groups is going to do when the Family Decency Council complains to the FCC about powder puff football on TV and Daimler Chrysler sponsors it/? what an incentive to file more specious complaints with the FCC.

I heartily recommend sending these propsed rules back where they came from- if we need changes to our rules let them come on oone at a time- let our practitioners chew on them for long enough to digest them- and then try them out and fine tune them- This pig in a poke will generate a hundred more problems than it will solve- once the cat gets out of the bag.

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